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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,839	03/15/2005	Uwe Leiner	48364	1820

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EXAMINER	
PICKETT, JOHN G	

ART UNIT	PAPER NUMBER
3728	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/527,839	LEINER ET AL.	
	Examiner	Art Unit	
	J. Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 March 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action acknowledges the applicant's Amendment filed 12 December 2007. Claims 1-12 are pending in the application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the

broad recitation a thickness preferably 40µm to 140µm", and the claim also recites "most preferably of approximately 60µm" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 103

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt (US 3,756,386) in view of Baker et al (US 4,341,302) and optionally Maletz et al (EP 1153579 A2; provided by applicant).

Claims 1 and 6: Marckardt discloses a package (see Figure 1) comprising a first chamber 3 containing a flowable substance (Col. 2, lines 16-20), and a second chamber 2; wherein the first and second chambers are sealed in a liquid-tight manner; the package formed with a cover film 1 having a first barrier foil of metallic material (Col. 2, lines 23-25), and a base film 4 as a composite film (layers 5/6) having a second barrier foil 5 of metallic material that is softer than the first foil (see for example, Col. 1, lines 47-54); and a zone 9 connecting the first and second chambers. Marckardt functions as claimed and merely lacks the express disclosure of cover film 1 being a composite film. Marckardt suggests the package made from plastic-foil packaging techniques (Col. 2, lines 21-23).

Baker teaches that a plastic-foil composite structure of plastic resin and metal was known in the art at the time the invention was made (see Col. 4, lines 47-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide cover 1 of Marckardt in a composite material in order to provide indicia

on the package. Since polyolefin was a known material at the time of the invention, the selection of polyolefin for use as the plastic resin would have been an obvious matter of design choice. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

The weakened zone is an optional feature. However, Maletz et al teaches the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an applicator. Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz et al teaches an alternate and equivalent means for accessing the mixture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982). As shown in Figure 19, Maletz anticipates a scored area as the weakened zone, thereby rendering claim 6 obvious.

Claim 2: Marckardt anticipates a base film 4 as a composite film (layers 5/6), the inner of which would constitute a sealing layer. Baker teaches that a plastic-foil composite structure of plastic resin and metal was known in the art at the time the invention was made (see Col. 4, lines 47-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to base film 4 of Marckardt in a composite material in order to provide indicia on the package. Since polyolefin was a known material at the time of the invention, the selection of polyolefin for use as the

plastic resin would have been an obvious matter of design choice. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. As to the dimensions, it has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Claim 3: Insofar as the scope of the claim may be determined, Marckardt discloses a common rim 12/14 and anticipates a welded seam as an alternative to gluing (see for example, Col. 3, lines 51-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the welding for the gluing in order to obtain a more secure seal.

Claim 4: Marckardt anticipates a single weld seam 8 (see for example, Col. 3, lines 5-7).

Claim 5: Marckardt, as modified with the composite film of Baker, discloses an outer layer on the cover film 1, which may be considered a stabilizing film.

Claims 7 and 8: Marckardt discloses weakened weld seam 9.

Claim 9: Marckardt discloses base film 4 with outer film 6.

Claim 10: Marckardt discloses standing areas (flat portion of the film) on both films (see Figure 1).

Claim 12: Marckardt-Baker, as applied to claim 1, discloses the provision of a package with substance in both chambers (see for example Col. 1, lines 3-9), exerting an external pressure on the first chamber (Col 3, lines 14-19), mixing the substances (Col. 3, lines 19-20), and dispensing the mixture (Col. 3, lines 20-25). Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz et al teaches an alternate and equivalent means for accessing the mixture by the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an applicator. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt-Baker as applied to claim 1 above, and further in view of Peuker et al (US 6,105,761; provided by applicant).

Marckardt-Baker, as applied to claim 1 above, discloses the claimed invention except for the two or more units.

Peuker et al teaches an array of dispensing packages (see Figure 6) for simplified storage (see Col. 3, lines 27-31), and for said purpose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide

the package of Marckardt-Baker in an array. Such a modification is considered a mere duplication of parts.

Response to Arguments

5. Applicant's arguments filed 12 December 2007 have been fully considered but they are not persuasive.

Applicant's argument hinges entirely on the assertion that Marckardt does not have a sealing layer. However, when cover 1 is modified by the teachings of Baker, Marckardt has an inner plastic resin layer that may be considered a "sealing layer" since it would be the layer contacting base film 4. Base film 4 is a composite layer, the inner layer of which may be considered a "sealing layer".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner, Art Unit 3728